

International Union of Operating Engineers, Local 150, AFL-CIO (Willbros Energy Services Company) and David D. Dvorak. Case 33-CB-2858

April 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On November 19, 1991, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, Countryside, Illinois, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Judith T. Poltz, Esq., for the General Counsel.

Louis E. Sigman, Esq., of Chicago, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Based on a charge filed by David D. Dvorak, an individual, on October 22, 1990,¹ the Regional Director for Region 33 issued a complaint and notice of hearing on November 28 against International Union of Operating Engineers, Local 150, AFL-CIO (Respondent or Local 150). The complaint alleges that Local 150 arbitrarily and discriminatorily caused the discharge of David D. Dvorak from his employment with Willbros Energy Services Company (Willbros or the Employer) in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Respondent filed a timely an-

swer admitting certain factual allegations of the complaint, including the jurisdictional allegations, but denying the commission of any unfair labor practices.

Hearing was held in these matters on June 19, 1991, in Rockford, Illinois. Briefs were received from the parties on or about October 28, 1991.² Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Delaware corporation with an office and primary place of business in Tulsa, Oklahoma, and with various jobsites in Iowa, Illinois, and other States, is engaged in the business of the construction of pipelines. The jurisdictional allegations of the complaint are admitted, and I find that the Employer is now and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts and Complaint Allegations*

Beginning in the summer of 1990, the Employer engaged in constructing a pipeline from a portion of Iowa, through Illinois, and into Wisconsin. The work force used by the Employer was composed of operating engineers supplied from Locals 234 (Iowa), 150 (Illinois), and 239 (Wisconsin), pursuant to an agreement between the Employer and the three locals. The work force thus assembled was intended to stay intact until the conclusion of the project. The project began in Iowa and as the pipeline progressed moved into Illinois. On or about the first of October, the work force constructing the pipeline moved from Iowa into Illinois and into the jurisdiction of Respondent. Respondent has a current collective-bargaining agreement with the Employer which provides, inter alia, for the maintenance of an exclusive hiring hall administered by the Respondent throughout its geographical jurisdiction in regards to the employ of operating engineer employees. Respondent admits that it administers an exclusive hiring hall pursuant to this contract, and in the course thereof, charges a referral fee of \$40 to cover the administrative costs of this service.³

Charging Party Dvorak was a member of Local 234 and when he moved with his crew into Illinois on or about October 6, he became liable for the payment of Local 150's \$40 referral fee. This fee can be collected by payroll deduction or as in the instant case, by collection by the Local 150 steward on the job. The complaint alleges that on or about October 9, the Respondent, through its admitted agent, Stew-

² The General Counsel's motion to correct transcript, dated October 29, 1991, is granted and incorporated by reference here.

³ The lawfulness of this charge is not in question. Payment of the charge allows the person referred to work under the referral for 35 calendar days. It must then be paid again to continue working under the referral.

¹ All dates are in 1990 unless otherwise noted.

ard Bobby Jackson, arbitrarily or discriminatorily refused to accept the referral slip and the \$40 referral fee tendered by Dvorak. It is further alleged that Steward Jackson on that date ordered Dvorak's machine turned off, told Dvorak that he was not going to work in Illinois, and ordered Dvorak to leave the Employer's jobsite and return to Iowa. Jackson is then alleged to have told the Employer that Dvorak was not eligible to continue working within the jurisdiction of Respondent as he had not paid the \$40 referral fee and requested the Employer discharge Dvorak, which it did. Respondent denies the factual allegations of this paragraph.

B. Events Leading to Dvorak's Discharge

Although I do not believe that it played any part whatsoever in Dvorak's discharge, Respondent attempted to show at the hearing that Dvorak was somehow not eligible to work in October because he was delinquent in his dues to Local 234. The business agent and financial secretary for Local 234 testified that, though his dues were delinquent in October, Dvorak was considered by the Local to be a member in good standing and eligible for referral.

The crucial determinations to be made in this proceeding is whether Dvorak attempted to pay the \$40 referral fee and Respondent refused to accept it and whether Respondent caused the discharge of Dvorak. This determination depends entirely on whether one believes Dvorak or Respondent's witnesses.

Dvorak testified that on September 26, he was referred by Local 234 to the Willbros job as a backhoe operator under the supervision of the Employer's supervisor, Doyle Strum. He began work for the Employer in Dubuque, Iowa. On October 6, his crew moved into East Dubuque, Illinois, and he was approached on the jobsite by Local 150's steward, Bobby Jackson. Jackson asked for the \$40 referral fee, prompting Dvorak to ask why Local 150 charged such a fee when the majority of the job was in Iowa and Local 234 did not charge a referral for the Illinois or Wisconsin engineers working there. Jackson did not comment. Dvorak then told the steward that he did not have his checkbook with him and Jackson said he would stop by again in a couple of days.⁴ According to Dvorak, Jackson at this time gave him a blank referral slip, which was to be filled out by Dvorak and given back to Jackson when the referral fee was paid.

Dvorak worked on the job that day and on October 8 without incident. On October 9, he was working with his oiler, Brad Folkers. At lunchtime, about 12:30 p.m., he was approached by Jackson, who asked for the referral fee and the referral slip, and his union book.⁵ Dvorak testified that he handed Jackson his referral slip and his check for \$40. He then explained to Jackson that his Local 234 steward had advised him not to pay the referral fee because of the likeli-

hood that he was to be transferred to another work crew which was still working in Iowa.

Dvorak testified that this statement annoyed Jackson, who proceeded to hand back to Dvorak his check and referral slip. While doing so, Jackson told Dvorak, "You're not working in Illinois, you don't have a union book, go back and talk to your union steward." Dvorak tried to explain further as he was willing to pay the fee to avoid an argument and keep his job. However, Jackson instructed the oiler, Folkers, to turn off Dvorak's backhoe, stating that Dvorak was not going to work in Illinois. Dvorak testified that he then apologized to Jackson for angering him and asked him to keep the check and referral slip and continue working. Jackson responded by telling Dvorak to keep the check and referral slip, go back to Iowa, and talk to his own steward.

Dvorak then went to the Employer's Iowa office. Approximately 2 hours later, he had a conversation at that office with Jackson and the Employers' office manager, Kelly Osborn. Dvorak approached Jackson and showed him his union book and Jackson said that he had said he didn't have one. Dvorak replied that he was new and did not realize his temporary card was his union book. He asked Jackson if it would have made any difference, and Jackson said no. Dvorak then left.

Sometime later that day, Dvorak received his last checks from a female clerical employee who worked in the Employer's office. At that time, his Local 234 steward, Jimmy Vincent, was present. After getting his checks, Dvorak went to his motel and wrote an affidavit which he delivered to Vincent's motel. The affidavit reads:

I'm filing a grievance for all wages lost while working for Willbros Pipeline Co., against IUOE Local 150. I had no complaint against my work. On or about 12:30 p.m., Bobby Jackson, Union Local 150 steward approached me and asked me for my referral slip and book. I handed him a check for \$40 with my referral slip, offering to purchase my job for 35 days. I showed him my Registration Slip in lieu of a book. He returned my 35 day registration slip along with my check and then told my oiler to shut my machine off, that I wasn't going to work in Ill.

Steward Jackson's version of his contacts with Dvorak varies somewhat. He testified that he tried to collect the \$40 fee from the workers on the first day they began work in Illinois. However, many of them did not have a check or money order with them and as he could not accept cash, he would give them a blank referral for the workers to fill out and collect both the money and referral in the next 2 to 4 days. The payment of the fee is required for the workers to continue to work for the Employer in Illinois.⁶

Jackson said that the first time he asked Dvorak for the fee, Dvorak said he did not need the Local 150 referral slip and did not have his checkbook with him. Jackson told him to keep the referral slip and to get a check to him whenever he could, that he would pick it up in 2 or 3 days. Jackson

⁴Jackson could only accept checks or money orders for payment of the referral fee.

⁵Dvorak testified, without credible contradiction, that he did not have his permanent union book, a plastic card from the International Union as it had not been sent to him. He did have a temporary card which served in its place. However, at the time, Dvorak was unaware that this is what Jackson wanted to see and thus told him he did not have a union book. Hereinafter, for the purposes of this decision, Dvorak's temporary card will be referred to as his union book or book.

⁶Because of the nature of the pipeline construction project, payment of the fee was essentially required to continue to work for the Employer on the project period. Once the work shifted into Illinois, there would be only a little work left in Iowa, and that would soon cease.

first testified that at this meeting, he did not tell Dvorak the consequences of failing to pay the fee, just that he had to pay it. Jackson later testified that at this meeting, Dvorak agreed to pay the fee, after having been told he would have to pay it in order to work in Illinois.⁷

Jackson could not remember the date of this first request, though it was in early October. He testified that a few days later, he approached Dvorak again to collect the fee. At this time, Dvorak was operating his backhoe and was in the presence of his oiler, Folkers. At a later point in this conversation, he had told the oiler to turn off Dvorak's backhoe as he "had done told Mr. Dvorak he'd go back to Illinois, or Iowa and see his steward, that he couldn't work in Illinois without paying a referral."

During this conversation, he also asked for a union book and was told by Dvorak he did not have a book or a receipt for a book, as Local 234 had not sent him one. Jackson testified that during this conversation, Dvorak did not offer to pay the referral fee and did not tender him a check for \$40. According to Jackson, he asked first for the fee, and Dvorak refused to pay it. According to Jackson, Dvorak gave no reason for his refusal. He testified that he then twice informed Dvorak that payment of the fee was a condition to working in Illinois. At this point he asked for Dvorak's book, which Dvorak could not produce. Dvorak told him he was a member of Local 234, but that they had not sent him a book. Jackson then testified that Dvorak could not pay the fee at this time, stating, "He couldn't, then, he didn't even have a book." Jackson testified that at this point in the conversation, with Dvorak refusing to pay the fee despite having been told he must pay it to continue working, and without a union book, he told Dvorak that he would have to go back to Iowa and talk to his steward.

Jackson then left the area. He met the Employer's supervisor, Doyle Strum, and told him that Dvorak would not pay the referral fee and had been told to go back to Iowa, see his steward, and work on the Iowa side. In later testimony he said that he also told Supervisor Strum that Dvorak could not work in Illinois.

Later that day, he told the Employer's office manager, Kelly Osborn, that Dvorak was not eligible to work in Illinois because he would not pay the fee. Depending on which part of Jackson's testimony one credits, if any, this conversation occurred either as the Employer was cutting Dvorak's final checks or after the checks had been cut. According to Jackson, Osborn said, "[H]e's laid off now." Jackson testified that Dvorak came in during this conversation and offered to show Jackson his union book and give him a check for the fee. Jackson replied, "Well, there's nothing I can do about it now, you're already laid off."⁸ Jackson did not even

look at Dvorak's book, testifying, "I didn't make a practice of being a steward in Iowa. I tried to keep mine across the river and that's where I check everything out at, was on this side of the river, Illinois."

Kelly Osborn testified that on October 9, he was contacted by Doyle Strum who told him that Dvorak was ineligible for employment in Local 150's jurisdiction according to the steward, Bobby Jackson. He testified that the Employer then prepared Dvorak's final checks. In the early afternoon, Jackson came to the office and told him that Dvorak had refused to pay the referral fee and that he could not work in Local 150's jurisdiction. Osborn testified that he made the decision to terminate Dvorak because Dvorak was a backhoe operator on the ditch crew and all their work was in Illinois. There was no other work available for Dvorak given the nature of the project.⁹ Although Osborn testified that he made the final checks out for Dvorak immediately on hearing from Supervisor Strum, I do not credit this testimony. He had no independent knowledge about the checks and could not remember whether he had one or two prepared. Osborn did not remember the conversation between Dvorak and Jackson which took place in his presence. Osborn testified that he gave Local 234 Steward Jim Vincent the checks and never had a conversation with Dvorak about them. I credit instead Dvorak's testimony that the checks were made out in his presence by the office payroll clerk after his conversation with Jackson in which Jackson refused to look at his book and accept his referral fee.

Brad Folkers testified about the conversation between Jackson and Dvorak at lunch. He testified that Jackson asked Dvorak for his referral and for the check, and wanted to see his card (book). Dvorak was reluctant to pay the fee. Folkers remembered that Dvorak said he heard from Jim Vincent that he was going to move back to a tie in crew (working then in Iowa). Jackson said, "I asked you the other day and you got smart with me." At about this point in the conversation, Folkers walked away because it was becoming heated. A few minutes later, Jackson told him to cut Dvorak's backhoe off, and Jackson left the scene. Dvorak left shortly thereafter. Folkers was asked in a leading fashion if he observed Dvorak tender Jackson a check or referral slip. He replied he did not. I do not credit this answer as establishing whether Dvorak did or did not tender the check and referral slip. He testified that he walked away when the conversation became heated, and thus was no longer part of it. Additionally, he volunteered that his memory of the meeting was not clear.

C. Credibility Resolutions, Findings, and Conclusions with Respect to the Complaint Allegations

For the reasons set forth above and hereinafter, I credit the testimony of Dvorak over that of Jackson, Osborn, and Folkers to the extent that any conflict exists. Not only did Dvorak have a better and more credible memory of the events in question, but, in my opinion, Jackson's testimony

⁷Based on my credibility findings at a later point in this decision, I do not believe that Jackson told Dvorak of the consequences of his refusal to pay the referral fee at this first meeting.

⁸This is not true as Osborn testified that if Jackson had asked him to put Dvorak back on the job, he would have done so. Moreover, Respondent contends on brief that Dvorak refused to pay the referral fee earlier in the day because he thought he was being sent back to work in Iowa by Willbros and learned that this was wrong when he spoke to his steward after being told to leave the job by Jackson. If one accepts Respondent's contentions in this regard, there is certainly no valid reason Jackson could not have accepted the referral

fee during this meeting, as it was only a few hours after the earlier request.

⁹Though Osborn was the witness in the best position to testify about the possibility that Dvorak was being considered for remaining work in Iowa, he offered nothing in this regard. He also made no adverse comments about the quality of Dvorak's work, though again he was the only witness who could validly testify about this subject.

shows that he did not tell the truth to the Board during the investigation stage of the proceeding and did not appear to be telling the whole truth at the hearing. Folkers is a member of Local 150, who appeared and testified on behalf of Respondent without subpoena, and was shown to have a faulty memory of the events that occurred on October 9, aside from the critical events about which he testified. Osborn's memory of the events in which he was involved was poor and, more than anything, he seemed to be testifying in a manner to avoid problems for his Employer.

First, with respect to the credibility of Steward Jackson, in a position paper submitted by Respondent to the Board, it asserted, in connection with events following the October 9 lunchtime confrontation between Jackson and Dvorak:

Approximately four hours later, Steward Jackson reported to the warehouse [Employer's office] in Iowa when Dvorak approached him and attempted to show him his Local 234 receipt. The Local Union was also advised that, without involvement of Steward Jackson or any other Local 150 representative, the Company had laid the charging party [Dvorak] off.

In another position paper from Respondent memorializing a conversation with a Board agent, Jackson, and Respondent's attorney, it represented:

It should be further noted that in the telephone conference with Mr. Jackson that Jackson stated that he did not speak with any representative of Willbros Pipeline regarding Dvorak's failure to tender the \$40.00 referral fee and did not in any way attempt to have him discharged. This was noted in our letter of November 12, 1990 in the last paragraph of page 2 and the first paragraph of page 3. [The material set forth above.]

These positions and statements of Jackson given to the Board during the investigation are patently untrue. Jackson, without question, told Employer Representatives Strum and Osborn that Dvorak could not work in Local 150's jurisdiction before he was discharged and that position was the proximate cause of his discharge. It must be remembered that these position papers are not merely the submission of an attorney who may have been misinformed about the facts. The second one purports to accurately recount what Jackson told the Board agent. If Jackson will falsify facts to a Board agent, I can see no reason to believe his testimony given at the hearing.

I therefore find as fact, in addition to the other evidence offered through Dvorak, that he did tender his referral fee to Jackson and Jackson refused to accept it before Jackson informed the Employer that Dvorak could not work in Illinois. I further find that Jackson did in fact inform the Employer that Dvorak could not work in Local 150's jurisdiction, thereby causing Dvorak to be discharged because of the geographically advancing nature of the Employer's pipeline project.¹⁰ I find that Jackson again refused to accept from

Dvorak his referral fee and the opportunity to inspect his union book at the Employer's office before Dvorak's discharge. Based on these findings, I conclude that Jackson caused the discharge of Dvorak without any legitimate reason being shown for this action.

I find that Respondent had a right to collect a \$40 referral fee from and see the union book of Dvorak. However, because of the evident personal animosity that Jackson developed for Dvorak, he refused to accept these documents when tendered, at a time before the discharge of Dvorak. I further find that it is totally disingenuous of Respondent to claim it did not discharge Dvorak or cause him to be discharged. Because of the nature of the pipeline project, if Dvorak could not work in Illinois, he could not work on the project. Respondent's speculation that there was work in Iowa and that Dvorak was not an adequate employee is not borne out by the testimony of Osborn, the only witness in a position to know what work the Employer had available or what it thought of Dvorak. There is certainly no evidence that the Employer had any reason other than the direction of Jackson to discharge Dvorak. The Employer freely admits that it would have put Dvorak back to work given the okay from Jackson.

There are no reasons advanced by Respondent to give legitimacy to its actions. Certainly there was no time deadline for employees to pay the referral fee. Jackson testified that employees are routinely given 2 to 4 days to do so. Dvorak was certainly within that timeframe when he showed Jackson his union book and again proffered the required referral fee at the Employer's office on October 9. What more could the Respondent legitimately want. Under Board law, the Union had a minimum obligation to fully "inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his tenure."¹¹ In *Teamsters Local 122 (August A. Busch & Co.)*, 203 NLRB 1041 (1973), the Board defined this minimum obligation as requiring giving reasonable notice of the delinquency, including a statement of the precise amount and months for which dues were owed, as well as an explanation of the method used in computing such amount, coupled with giving adequate opportunity to make payment. In *Teamsters Local 150 (Delta Lines)*, 242 NLRB 454, 455 (1979), the Board stressed that inquiries made by an individual as to his or her obligations do not relieve a union of its affirmative obligation under the Act specifically to inform an individual of his obligations and afford him a reasonable opportunity to satisfy them before seeking his discharge under a union-security clause. The

thereafter, when Jackson told Supervisor Strum that Dvorak could no longer work in Illinois, he was not asking that he be discharged, but was merely having him sent back to Iowa where presumably there was work available for him. However, Jackson in his testimony could not remember any reason given for Dvorak's purported refusal to pay the referral fee, and did not mention the matter of Dvorak being transferred by the Employer back to Iowa. He also testified that even if Dvorak had tendered him the referral fee at that time, he would not have accepted it and allowed Dvorak to remain on the job, because Dvorak could not produce a union book. I believe that Jackson fully intended that Dvorak be discharged when he told Supervisor Strum that Dvorak could no longer work in Local 150's jurisdiction and that he had no other thought in mind.

¹¹ *NLRB v. Hotel & Club Employees Local 568 (Philadelphia Sheraton)*, 320 F.2d 254, 258 (3d Cir. 1963), enf. 136 NLRB 888 (1962).

¹⁰ Although on brief, Respondent makes the contention that when Jackson ordered Dvorak back to Iowa for nonpayment of the referral fee, he was simply referring him back to work there as Dvorak had based his reluctance to pay the fee on his understanding that he was being shifted back to Iowa temporarily. It further contends that

Board has held that a week does not constitute reasonable opportunity.¹² Here, Dvorak raised a reasonable inquiry at the jobsite about the necessity of paying the referral fee if he were to be transferred back to Iowa and was not only given no clear explanation of his obligations in that event, but was given *no* opportunity to comply with the request for the referral fee. Some 2 or 3 hours later, he again offered to pay the fee and again the offer was rejected. In my mind, this does not begin to satisfy the Respondent's obligation as defined by the Board. It was offered its fee by a member of a neighboring local, and refused to accept it, thus forcing the termination of Dvorak. Lacking any legitimate reason, the only reasons apparent from the record are personal animosity, or personal animosity coupled with a dislike, of an out-of-state employee questioning the authority of Steward Jackson.

I find and conclude that Respondent, acting through its admitted agent, Steward Bobby Jackson, arbitrarily and discriminatorily refused to accept Dvorak's referral fee and referral slip, as alleged in the complaint, and thereafter caused him to be discharged because of its arbitrary and discriminatory refusal to accept the referral fee. Respondent's actions in this regard are in violation of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Willbros Energy Services Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By arbitrarily and discriminatorily refusing to accept the referral fee and slip of David Dvorak on October 9, 1990, and thereafter causing the Employer to discharge Dvorak because of its refusal to accept Dvorak's referral fee and slip, Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act.

4. The unfair labor practices found to have been committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated Section 8(b)(1)(A) of the Act, it is recommended that it be ordered to cease and desist therefrom and to take the following affirmative action necessary to effectuate the policies of the Act.

It is recommended that Respondent be ordered to affirmatively notify the Employer that it has no objections to the reinstatement of Dvorak on the job in question or any future jobs it may have in Respondent's jurisdiction.¹³ Further, Respondent should be ordered to make Dvorak whole for any losses of wages or benefits he may have suffered by reason

of Respondent's discriminatory actions in causing his discharge on October 9, 1990. Such backpay liability shall begin October 9, 1990, and end on the date the crew to which Dvorak was assigned completed its work on the entire involved project. Backpay and benefits shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, Countryside, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Arbitrarily and discriminatorily refusing to accept the referral fee and referral slip tendered by employees in satisfaction of obligations under its collective-bargaining agreement with Willbros Energy Services Company, or with any other employer.

(b) Arbitrarily and discriminatorily demanding and causing the discharge of an employee under the union-security clause of its collective-bargaining agreement with Willbros Energy Services Company, or with any other employer, when the employee has tendered such dues and fees as required under the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately inform Employer Willbros Energy Services Company that Respondent has no objections to reinstatement of David Dvorak to his former position or to positions with the Employer on any future jobs it may have within Respondent's jurisdiction and make David Dvorak whole for any losses he may have suffered by virtue of Respondent's unlawful and discriminatory action in causing the Employer to discharge him, in the manner prescribed in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its business office and meeting places copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union at its business office immediately upon receipt and

¹² *Teamsters Local 122 (August A. Busch & Co.)*, supra.

¹³ The Employer's involved project had been completed as of the date of hearing. Therefore reinstatement is not feasible. The remedy here is believed to serve the purposes of the Act and is proper under Board law. *Sheet Metal Workers Local 355 (Zinsco Electrical)*, 254 NLRB 773 (1981); *Iron Workers Local 111 (Northern States)*, 298 NLRB 930 (1990).

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT arbitrarily and discriminatorily refuse to accept the referral fees and referral slips tendered by employees in satisfaction of obligations under our collective-bargaining agreement with Willbros Energy Services Company, or with any other employer.

WE WILL NOT arbitrarily and discriminatorily demand and cause the discharge of an employee under the collective-bargaining agreement with Willbros Energy Services Company, or with any other employer, when the employee has tendered such dues and fees as required under the collective-bargaining agreement.

WE WILL immediately inform Employer Willbros Energy Services Company that we have no objections to reinstatement of David Dvorak to his former position or to positions with the Employer on any future jobs it may have within our jurisdiction.

WE WILL make David Dvorak whole for any loss in wages and benefits he may have suffered by virtue of our arbitrary and discriminatory refusal to accept his tendered referral fee and slip and our procurement of his discharge from employment by Willbros Energy Services Company.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO